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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 MARTIN EDWARD WALTERS,

12 Petitioner,

13 vs.

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15 DK SISTO, WARDEN, CSP SOLANO

16 Respondent.

CASE NO. 07CV2236

**ORDER: (1) DISMISSING
WITHOUT PREJUDICE
PETITION FOR WRIT OF
HABEAS CORPUS; (2) DENYING
MOTION FOR LEAVE TO
PROCEED IN FORMA PAUPERIS
AS MOOT; AND (3) DENYING
MOTION TO APPOINT COUNSEL
AS MOOT**

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18 Petitioner, a prisoner proceeding pro se, has submitted a petition for writ of habeas
19 corpus pursuant to 28 U.S.C. § 2241 [Doc. No. 1], together with a motion for leave to proceed
20 in forma pauperis [Doc. No. 2], and a motion to appoint counsel [Doc. No. 3.]

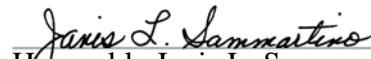
21 Although Petitioner filed this action pursuant to 28 U.S.C. § 2241, he is a state prisoner
22 attacking the validity of a state court conviction and sentence imposed by the state of California.
23 Therefore, Petitioner may not proceed under Section 2241, but may only proceed with a habeas action
24 in federal court under 28 U.S.C. § 2254. White v. Lambert, 370 F.3d 1002, 1006-07 (9th Cir. 2004)
25 (holding that Section 2254 is the proper jurisdictional basis for a habeas petition brought by an
26 individual “in custody pursuant to a state court judgment”). Section 2254 is properly understood as
27 “in effect implement[ing] the general grant of habeas corpus authority found in § 2241 as long as the
28 person is in custody pursuant to the judgment of a state court, and not in state custody for some other

1 reason, such as pre-conviction custody, custody awaiting extradition, or other forms of custody that
2 are possible without a conviction.” [citations omitted.] Id. at 1006 (quoting Walker v. O’Brien, 216
3 F.3d 626, 633 (7th Cir. 2000) (emphasis in original).

4 Therefore, this Court **DISMISSES** without prejudice the petition for habeas corpus, **DENIES**
5 the motion for leave to proceed in forma pauperis as moot, and **DENIES** the motion to appoint
6 counsel as moot.

7 IT IS SO ORDERED.

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9 DATED: November 30, 2007

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11 Honorable Janis L. Sammartino
12 United States District Judge
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